



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

WALTER E. WHITCOMB
COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

Memorandum

To: Commission Members

From: Roderick Falla

Date: December 2, 2015

Re: ZP 757 Decision Document; OFLC, Inc., Big Moose Township

I. The Rezoning Proposal

The Petitioner OFLC, Inc. proposes to rezone approximately 1.7 acres of a P-FW Subdistrict (designated as a deer wintering area) to an M-GN Subdistrict. The zoning petition is a companion application to the pending Development Permit application DP 4965 submitted by the Mike Theriault Construction, LLC for an approximately 10.4 acre expansion to an approximately 5.6 acre gravel pit. (The area to be rezoned is shown on Attachment A to the draft decision.) The purpose of the proposed rezoning of 1.7 acres from P-FW to M-GN is to accommodate submission of Theriault Construction's permit application seeking (a) after-the-fact approval of the existing 5.6 acre gravel pit, approximately a half acre of which is located in the area presently zoned P-FW, and (b) approval of a 10.4 acre expansion, including a little more than an acre of which is presently zoned P-FW. Theriault Construction proposes to continue operation of the gravel pit consistent with the terms and conditions of any permit issued upon completion of the review of the pending Development Permit application DP 4965. This would include reclamation recommended by the Department of Inland Fisheries and Wildlife (IF&W) for the entire 1.7 acres, excluding the land management road that runs through this area that previously was issued an after-the-fact permit by the Maine Forest Service.

II. Legal Framework for the Commission's Review

A. Statutory Review Criteria

Under 12 M.R.S. Section 685-A(8-A) of the Commission's statutes no change in a district boundary shall be approved unless there is substantial evidence that:

- A. The proposed land use district is consistent with the standards for district boundaries in effect at the time; the Comprehensive Land Use Plan; and the purpose, intent and provisions of this chapter; and

- B. The proposed land use district has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resource within the affected area.

B. Regulatory Review Criteria

Under Section 10.23,D,2,e of the Commission's Land Use Districts and Standards, the Commission may rezone a deer wintering area designated as a Fish and Wildlife Protection (P-FW) Subdistrict by reducing the size of the P-FW or by changing the P-FW Subdistrict to another subdistrict designation if the Commission finds by substantial evidence that:

- (1) The area designated as a P-FW Subdistrict is no longer substantially used as a wintering area by deer and has not been so used for a period of ten years; and
- (2) The change is consistent with the Comprehensive Land Use Plan, and
- (3) The change is more appropriate for the protection and management of the resource within the affected area.

Alternatively, the Commission may approve such a subdistrict change if the owner of the affected land designated as P-FW and the Commissioner of the Department of Inland Fisheries and Wildlife agree that such a change is appropriate or the area is not needed to meet the deer management objectives established by the Department.

III. Analysis

The purpose of the M-GN subdistrict is to permit forestry and agricultural management activities. The area around the existing and proposed expanded gravel pit is timberland land and the gravel pit is compatible with this surrounding use and is a use allowed with a permit in the M-GN. This use as a gravel pit is consistent with the intent of and standards for the M-GN.

Appendix E, Page 5 of the Commission's Comprehensive Land Use Plan states the standard for removal of deeryards should be strict because the deeryard program is designed to be a long-term habitat protection program, but recognized that removal of land from the P-FW designation is appropriate in some cases. The removal criteria specify that a deeryard must not have been used by deer for ten years to qualify for removal, however, a deeryard zone may be removed without extensive documentation of no use if both IF&W and the landowner agree that removal of land from the P-FW designation is appropriate. In this case, with the agreement of IF&W and the landowner that rezoning the proposed area from P-FW to M-GN is appropriate, the deeryard may be rezoned without extensive documentation of no use.

Based on the information submitted by the Petitioner and comments received from the review agencies, the proposed rezoning of approximately 1.7 acres from P-FW to M-GN would have no undue adverse impacts on the uses and resources within this area. Reclamation of this area with an herbaceous mix as recommended by IF&W will be a requirement of any permit issued following review of the pending companion Development Permit application DP 4965 and that would increase forage opportunities for deer in this area.

IV. Staff Recommendation

Staff recommends that the Commission approve the petition of the OFLC, Inc., to rezone 1.7 acres currently designated as a (P-FW) Fish and Wildlife Protection Subdistrict to a (M-GN) General Management Subdistrict as shown in Attachment A to the draft decision.

Attachments: Draft Decision with Zoning Map
 List of Record Materials available on FTP Site



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04330-0022

WALTER E. WHITCOMB
COMMISSIONER

COMMISSION DECISION
IN THE MATTER OF

OFLC, Inc.

Findings of Fact and Decision

ZONING PETITION ZP 757

The Maine Land Use Planning Commission, at a meeting of the Commission held December 9, 2015, at Presque Isle, Maine, after reviewing the application and supporting documents submitted by OFLC, Inc., for Zoning Petition ZP 757, public comments, agency review comments and other related materials on file, pursuant to 12 M.R.S. Sections 681 et seq. and the Commission's Standards and Rules, finds the following facts:

1. Petitioner OFLC, Inc.
& c/o Karen Confalone, President
Landowner: 1000 MacArthur Causeway
Miami, Florida 33132
2. Agent: Mike Theriault Construction, LLC
c/o Mike Theriault
PO Box 731
Greenville, Maine 04441
3. Date of Completed Petition: November 3, 2015
4. Location of Proposal: Big Moose Twp., Piscataquis County
5. Present Zoning: (P-FW) Fish and Wildlife Protection Subdistrict
6. Proposed Zoning: (M-GN) General Management Subdistrict

Background

7. Mike Theriault Construction, LLC (Theriault Construction), pursuant to a mineral rights agreement with OFLC, Inc. (the Petitioner or OFLC), operates a gravel pit on the Petitioner's property.
8. On August 12, 2014, the Maine Forest Service (MFS) approved an after-the-fact (ATF) Land Management Road Construction Permit-RP 14002, which satisfied the requirement of an Administrative Settlement Agreement CH 27 Case # 14-130-001 MFS entered into with OFLC. That ATF permit allowed the Petitioner to use and maintain a previously constructed land management road that extended through P-FW and P-WL1 subdistricts. A portion of that road is located with the P-FW subdistrict that is within the gravel pit that is now the subject of this petition to rezone approximately 1.7 acres of P-FW to M-GN.

9. On January 8, 2015, Theriault Construction, submitted a permit application for the expansion of the gravel pit within OFLC's property (Development Permit application DP 4965). Theriault Construction had been operating the gravel pit which was located within M-GN and P-FW Subdistricts, and originally was less than 5 acres in size. Operation of a gravel pit less than 5 acres within the M-GN and P-FW Subdistricts is a use regulated by the Maine Forest Service (10.22,A,3,e(1)). Recently, Theriault Construction expanded the gravel pit to approximately 5.6 acres. Operation of a gravel pit within a M-GN Subdistrict greater than 5 acres requires a permit from the Commission (10.22,A,3,c(10)). Operation of a gravel pit greater than 5 acres with a portion in a P-FW Subdistrict is regulated by the Commission and prohibited (10.23,D,3,f). As a result, the permit application DP 4965 was submitted, seeking after-the-fact approval for the existing, unauthorized expansion in excess of 5 acres, and approval to expand the gravel pit by approximately 10.4 acres to create an approximately 16 acre gravel pit. An approximately half acre section of the operational gravel pit, formerly subject to the jurisdiction of the Maine Forest Service is located with a P-FW Subdistrict. That same approximately half acre section includes a segment of the land management road approved by the Maine Forest Service pursuant to its permit RP 14002. As part of the expansion, Theriault Construction proposes to extract gravel from a little more than one acre of the P-FW Subdistrict immediately adjacent and connected to the approximately half acre of P-FW already disturbed. In total, approximately 1.7 acres currently zoned as a P-FW Subdistrict would need to be rezoned to M-GN before the Commission could issue an after-the-fact approval for the existing gravel pit that is greater than five acres and an approval for the proposed expansion of the footprint of the gravel pit, including into the P-FW.

Proposal

10. On November 3, 2015, the Petitioner submitted a complete zoning petition to rezone approximately 1.7 acres of a P-FW Subdistrict to an M-GN Subdistrict. The zoning petition is a companion application to the pending Development Permit application DP 4965 submitted by the Theriault Construction for an approximately 10.4 acre expansion to an approximately 5.6 acre gravel pit. (The area to be rezoned is shown on Attachment A to this decision.) The purpose of the proposed rezoning of 1.7 acres from P-FW to M-GN is to accommodate submission of Theriault Construction's permit application seeking (a) after-the-fact approval of the existing 5.6 acre gravel pit, approximately a half acre of which is located in the area presently zoned P-FW, and (b) approval of a 10.4 acre expansion, including a little more than an acre of which is presently zoned P-FW. Theriault Construction proposes to continue operation of the gravel pit consistent with the terms and conditions of any permit issued upon completion of the review of the pending Development Permit application DP 4965. This would include reclamation recommended by IF&W for the entire 1.7 acres, excluding the existing land management road.

Review Criteria

11. Under 12 M.R.S. Section 685-A(8-A) of the Commission's statutes no change in a district boundary shall be approved unless there is substantial evidence that:
 - A. The proposed land use district is consistent with the standards for district boundaries in effect at the time; the Comprehensive Land Use Plan; and the purpose, intent and provisions of this chapter; and
 - B. The proposed land use district has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resource within the affected area.

12. Under Section 10.23,D,2,e of the Commission's Land Use Districts and Standards, the Commission may rezone a deer wintering area designated as a Fish and Wildlife Protection (P-FW) Subdistrict by reducing the size of the P-FW or by changing the P-FW Subdistrict to another subdistrict designation if the Commission finds by substantial evidence that:
 - (1) The area designated as a P-FW Subdistrict is no longer substantially used as a wintering area by deer and has not been so used for a period of ten years; and
 - (2) The change is consistent with the Comprehensive Land Use Plan, and
 - (3) The change is more appropriate for the protection and management of the resource within the affected area.

Alternatively, the Commission may approve such a subdistrict change if the owner of the affected land designated as P-FW and the Commissioner of the Department of Inland Fisheries and Wildlife agree that such a change is appropriate or the area is not needed to meet the deer management objectives established by the Department.

Review Comments

13. On January 1, 2015, as part of the agency review and comments for the companion Development Permit application DP 4965, the Department of Inland Fisheries and Wildlife (IF&W) stated that they had no wildlife or wildlife habitat concerns since the portion of the area currently zoned P-FW that would be impacted is small. IF&W recommended reclamation of the area after gravel extraction was complete. Reclamation would include planting an herbaceous mix that would increase forage opportunities for deer during early winter. On November 16, 2015, IF&W sent an email to the Commission reaffirming the same comments offered for the pending Development Permit application as part of the agency's review of this zoning petition and stating agreement with the proposed rezoning.
14. The Maine Natural Areas Program has reviewed the zoning petition and determined that according to their current information, there were no rare botanical features that would be disturbed within the project site.
15. The Maine Forest Service has reviewed the zoning petition and recommended following all recommendations from IF&W.
16. The Maine State Soil Scientist has reviewed the zoning petition and recommended that the gravel mining operation maintain a separation distance from the ground water table within the proposed expansion area.

Analysis and Discussion

17. The purpose of the M-GN subdistrict is to permit forestry and agricultural management activities. The area around the existing and proposed expanded gravel pit is timberland land and the gravel pit is compatible with this surrounding use and is a use allowed with a permit in the M-GN. This use as a gravel pit is consistent with the intent of and standards for the M-GN.
18. Appendix E, Page 5 of the Commission's Comprehensive Land Use Plan states the standard for removal of deeryards should be strict because the deeryard program is designed to be a long-term habitat protection program, but recognized that removal of land from the P-FW designation is

appropriate in some cases. The removal criteria specify that a deeryard must not have been used by deer for ten years to qualify for removal, however, a deeryard zone may be removed without extensive documentation of no use if both IF&W and the landowner agree that removal of land from the P-FW designation is appropriate. In this case, with the agreement of IF&W and the landowner that rezoning the proposed area from P-FW to M-GN is appropriate, the deeryard may be rezoned without extensive documentation of no use.

19. Based on the information submitted by the Petitioner and comments received from the review agencies, the proposed rezoning of approximately 1.7 acres from P-FW to M-GN would have no undue adverse impacts on the uses and resources within this area. Reclamation of this area with an herbaceous mix as recommended by IF&W will be a requirement of any permit issued following review of the pending companion Development Permit application DP 4965 and that would increase forage opportunities for deer in this area.
20. The facts are otherwise as represented in Zoning Petition ZP 757 and supporting documents.

Based on the above Findings and the analysis and discussion, the Commission concludes:

1. The change in the district boundaries from P-FW to M-GN is consistent with the standards for district boundaries in that the surrounding area is predominantly timber land, the purpose of the M-GN is to permit forestry and agricultural management, and gravel pits (mineral extraction) are an allowed use in the M-GN.
2. The change in the district boundaries from P-FW to M-GN is consistent with the Commission's Comprehensive Land Use Plan.
3. The owner of the affected land currently zoned P-FW and the Department of Inland Fisheries and Wildlife both agree that the change in the district boundaries from P-FW to M-GM is appropriate.
4. The change in the district boundaries from P-FW to M-GN will have no undue adverse impact on existing uses or resources.
5. The change is consistent with the purpose, intent, and provisions of Title 12, Chapter 206-A.

Therefore, the Commission approves the petition of the OFLC, Inc., to rezone 1.7 acres currently designated as a (P-FW) Fish and Wildlife Protection Subdistrict to a (M-GN) General Management Subdistrict as shown on Attachment A.

In accordance with 5 M.R.S. section 11002 and Maine Rules of Civil Procedure 80C, this decision by the Commission may be appealed to Superior Court within 30 days after receipt of notice of the decision by a party to this proceeding, or within 40 days from the date of the decision by any other aggrieved person. In addition, where this decision has been made without a public hearing, any aggrieved person may request a hearing by filing a request in writing with the Commission within 30 days of the date of the decision.

DONE AND DATED AT PRESQUE ISLE, MAINE THIS 9TH DAY OF DECEMBER, 2015

By:_____

Nicholas D. Livesay, Executive Director

This change in subdistrict designation is effective on December 24, 2015.











1 inch = 150 feet

ZP 757, Attachment A
Big Moose Twp.
Piscataquis County

Big Moose Twp

Proposed M-GN
Total 1.70 AC

- | | | | |
|---|---------------|---|-------|
|  | Proposed M-GN |  | P-FW |
|  | State Routes |  | P-SL2 |
| | |  | P-RP |
| | |  | P-WL1 |
| | |  | P-WL2 |
| | |  | P-WL3 |

Source: Esri, DigitalGlobe, GeoEye, I-cubed, Earthstar Geo
AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the C

List of Record Materials for Zoning Petition ZP 757

1. Attachment A, zoning map prepared by LUPC
2. IF&W Comments for companion application for Development Permit DP 4965
3. IF&W email comments for zoning petition
4. Maine State Soil Scientist email comments for zoning petition
5. MFS email comments for zoning petition
6. MNAP comments for zoning petition
7. Petition for Zoning Permit ZP 757
8. MFS ATF Land Management Road Permit
9. MFS Settlement Agreement

These record materials are available on the Commission's FTP site:

Go

to http://www.maine.gov/dacf/lupc/review/CommissionersDownloadFromHere/CommMtg_December2015/

After entering the user name and password, the files that are available for your review in the following location:

Folder: **zp757**